

82-812

APPENDIX

Supreme Court of the State of California
FILED

MAY 17 1973

MICHAEL RODAK, JR., CLERK

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1972

No. 812

THOMAS TONE STORER, ET AL., *Appellants*

VS.

EDMUND G. BROWN, JR. ET AL., *Appellees*

No. 6050

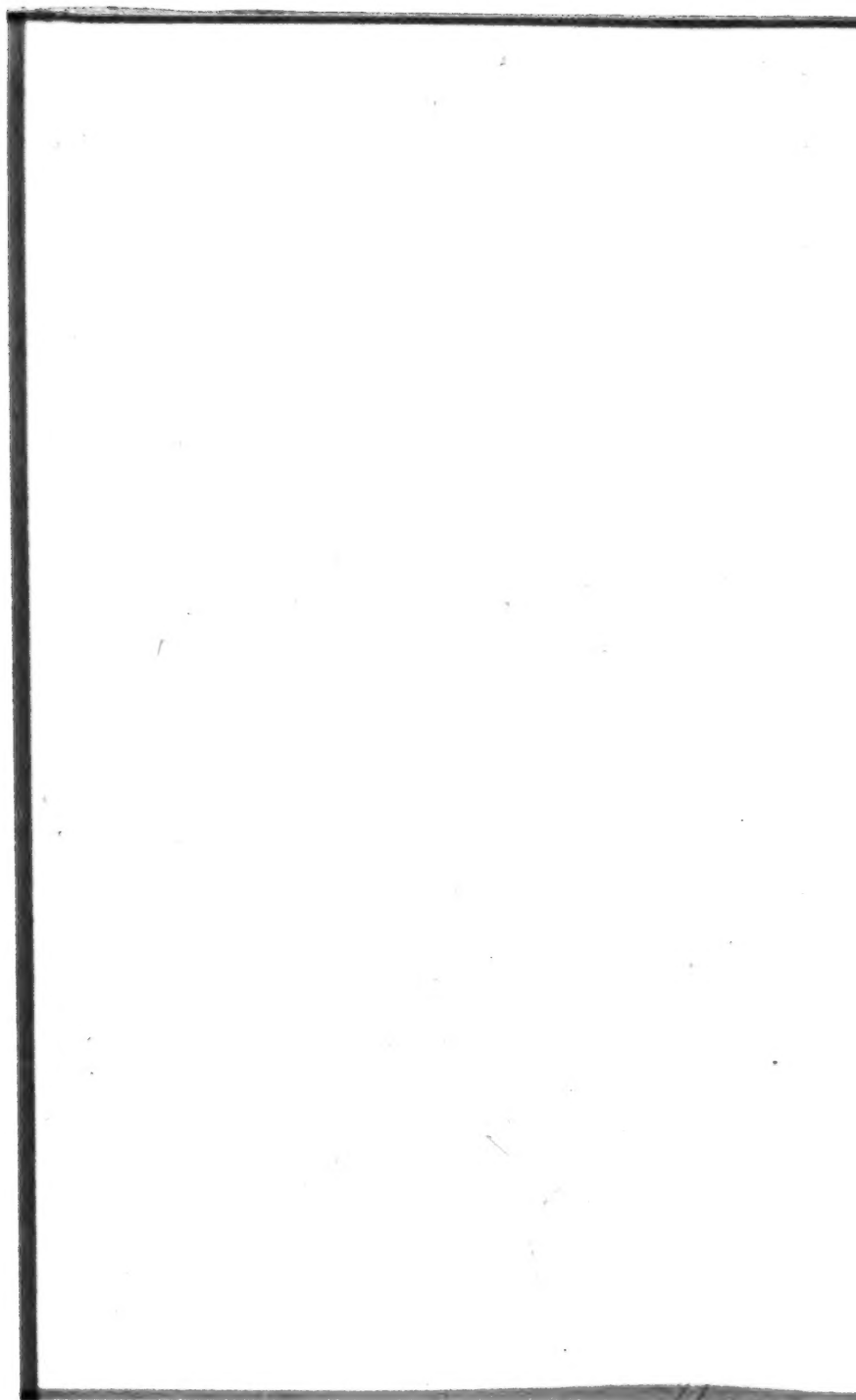
LAURENCE H. FROMMHAGEN, ET AL., *Appellants*

VS.

EDMUND G. BROWN, JR. ET AL., *Appellees*

On Appeal from the United States District Court
for the Northern District of California

Probable Jurisdiction Noted and Cases
Consolidated March 5, 1973



APPENDIX

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1972

No. 812

THOMAS TONE STORER, ET AL., *Appellants*

VS.

EDMUND G. BROWN, JR. ET AL., *Appellees*

No. 6050

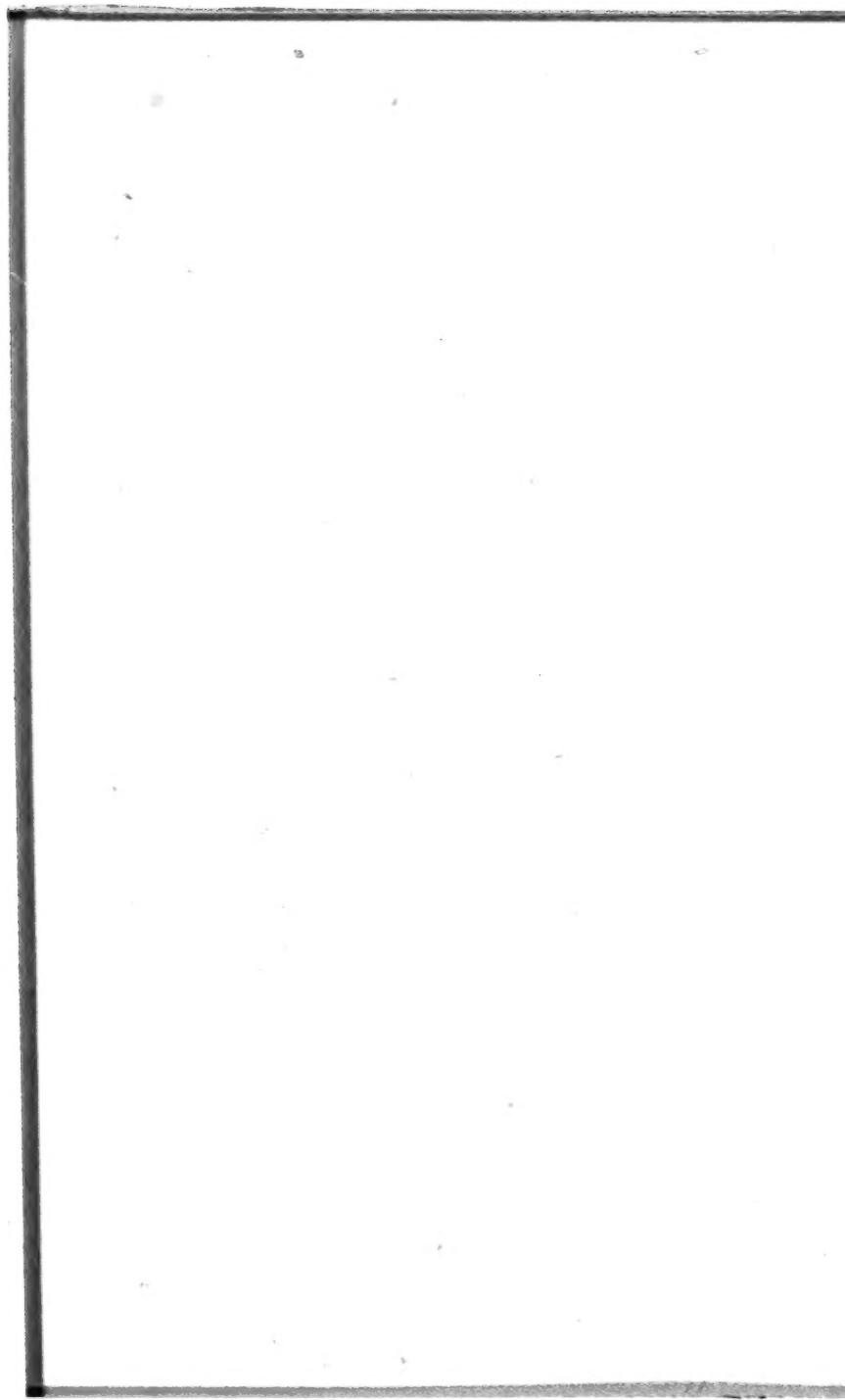
LAURENCE H. FROMMHAGEN, ET AL., *Appellants*

VS.

EDMUND G. BROWN, JR. ET AL., *Appellees*

On Appeal from the United States District Court
for the Northern District of California

Probable Jurisdiction Noted and Cases
Consolidated March 5, 1973



Subject Index

Storer v. Brown

	Page
Docket entries (docket 72-0978, filed 5-30-72)	1
Civil rights complaint for injunctive relief, declaratory judgment and request for the convening of a three-judge court (filed 5-30-72)	6
Reassignment of cause (filed 7-13-72)	20
Memorandum with reference to Thomas T. Storer, et al. vs. Edmund G. Brown, Jr., et al. No. C 72-978-RHS	21
Order designating United States Circuit Judge and United States District Judges pursuant to §2284, Title 28, United States Code (7-14-72)	22
Notice of motion and motion for preliminary injunction (filed 8-7-72)	23
Defendant Secretary of State's opposition to preliminary injunction and motion to dismiss the action (before three-judge court) (8-18-72)	25
Affidavit of Thomas Tone Storer (9-6-72)	27

Hall v. Brown

Docket entries (Docket 72-1468, filed 8-11-72)	29
Complaint for declaratory and injunctive relief (filed 8-11-72)	33
Notice of requirement of three-judge court (8-11-72)	45
Notice of motion and motion for preliminary injunction (8-11-72)	46
Notice re convening of three judge court (28 U.S.C. Sec. 2284, filed 8-16-72)	48
Reassignment order (assignment plan (h) (3), filed 8-23-72)	50
Defendant Secretary of State's opposition to preliminary injunction and motion to dismiss the action (before three-judge court, 8-25-72)	51
Notice of related cases (L.R. 101, 8-18-72)	53

Frommhagen v. Brown		Page
Notice of motion, motion for intervention of plaintiffs (6-4-72)		56
Order granting leave to intervene (filed 7-20-72)		68
Notice of motion and motion for preliminary injunction (8-4-72)		69
Plaintiff's response to defendant's memorandum of points and authorities in opposition to granting of preliminary injunction and in support of Secretary of State's motion to dismiss the action (8-23-72)		71
Exhibit A (newspaper article) Santa Cruz Sentinel, Sun- day morning (3-26-72)		77
Plaintiff's written rebuttal to oral arguments by counsel for defendant-in-intervention (9-4-72)		79
<hr/>		
Opinion and order (filed 9-8-72)		84

DOCKET ENTRIES

Docket 72-0978

Filed 5-30-72

**In the United States District Court
for the Northern District of California**

**Thomas Tone Storer; Elizabeth
Johnson; Salle S. Soladay;
Robert Fracchia; and Philip
Drath
Plaintiffs**

**Edmund G. Brown, Jr., Secy of State of
Calif; and George H. Gness, County Clerk
for Marin County
Defendants**

Attorneys

**American Civil Liberties Union
Foundation of No. Calif.
593 Market St., S.F.**

vs.

**Attorney General of California
6000 State Building
San Francisco, CA 94102**

Cause

**Civil Rights Compl't: Inj & Decl
Relief (Elections suit challenging
Calif's scheme for independent
ballot access)**

Related to C-72-1468

1972:

May 30—

1. Filed Complaint; issued summons (Req for convening of 3-Judge Ct).
2. Filed Ord for proc serv by Anthony Lewis (Clerk).

June 6—

3. Filed mo for intervention of pltfs, 6-27-72/ 1:30.

June 26—

4. Filed pltfs' Response to mo for intervention.

June 27—

Ord: Ruling deferred on mo for intervention; 3-Judge Ct to be convened—AJZ.

July 13—

5. Filed Ord reassigning case to Judge Schnacke for fur procedgs—OJC.

17—

6. Filed memorandum & order convening 3 judge Court, consisting of Judges Oliver D. Hamlin, Robert H. Schnacke and William G. East.

July 17—

Mailed copy of complete file (Chambers, CJ) to Hon. Oliver D. Hamlin, William G. East and Robert H. Schnacke.

July 20—

7. Filed Ord Granting L. H. Frommhagen lv to to intervene as party pltf—RHS.

1972:

Aug. 7—

8. Filed intervening pltf Frommhagen's not. of mo for pre-injn, 8-31-72/2pm.
9. Filed pltfs' not. & mo. for pre-injn, 8-31-72/2pm.
10. Filed pltfs' Memo re pre-injn.
11. Filed Ord for proc serv by Harold Goff.
12. —(Mis-numbered: no #12 in this case).

Aug. 18—

13. Filed deft Sec'y of State's opp to pre-injn & mo to dismiss.
14. Filed deft Sec'y of State's Memo of pts & auths in opp to pre-injn & in supp of mo to dismiss.

Aug. 23—

Filed Ord that this case is related to C-72-1468 (In 72-1468).

Aug. 25—

15. Filed pltf's response to deft's memo in opp to pre-injn.

Aug. 29—

16. Filed ord for proc serv by Nancy M. Kane (clerk).

Sept. 6—

17. Filed pltf Frommhagen's rebuttal to oral args by counsel for deft-in-intervention.

Aug. 31—

Ord after hrg: mos to dismiss & for pre-injn—submitted.

1972:

Sept. 8—

18. Filed ltr from Frommhagen to RHS re non-appearance of counsel for deft Kelley.

Sept. 8—

19. Filed Opinion and Order: defts' mos to dismiss are Granted and actions (72-978 & 72-1468) are Dismissed.
(—RHS, ODH, Jr. WGE concurred but did not sign).

Sept. 13—

20. Filed Notice of Appeal to US Supreme Court (w/designation & pts on

Sept. 18—

Mailed not. to counsel of filing appeal.

Sept. 21—

21. Filed appellee's designation of record.

Sept. 25—

Rec'd copy of ltr from deft's atty to Ct. Reporter confirming order of transcript.

Oct. 10—

22. Filed notice of Appeal by Pltf—Intervenor Laurence H. Frommhagen.

Oct. 10—

Mailed Clerk notice of filing appeal to parties of record.

Oct. 17—

23. Filed ltr from County counsel of Marin County to clerk waiving transcript for appeal.

1972:

Oct. 18—

24. Filed letter from Mr. Frommhagen Pltff-
Intervenor designation of record on appeal.

Oct. 19 -72—

Made, Mailed Record On Appeal to Supreme
Court of the United States by Certified Mail
Receipt No. 224332.

Oct. 27—

25. Filed receipt from US Supreme Ct for record
on appeal.

Dec. 7—

26. Filed receipt from US Supreme Court for
record on appeal.

Dec. 19—

27. Filed Reporter's Transcript of Aug. 31, 1972.

1973:

Mar. 12—

28. Filed Ord from Supreme Ct granting appel-
lant's mo to proceed in forma pauperis.

I hereby certify that the annexed instrument is a
true and correct copy of the original on file in my
office.

ATTEST:

CHARLES J. ULFERS

Clerk, U. S. District Court
Northern District of California

By /s/ (illegible)

Deputy Clerk

Dated April 3, 1973

Paul N. Halvonik
 Charles C. Marson
 Peter E. Sheehan
 American Civil Liberties Union Foundation
 of Northern California, Inc.
 593 Market Street, Suite 227
 San Francisco, California 94105
 Telephone: 433-2750
 Attorneys for Plaintiffs

In the United States District Court
 for the Northern District of California

No. C-72-978

AJZ

Thomas Tone Storer, Elizabeth Johnson,
 Salle S. Soladay, Robert Fracchia and
 Philip Drath,

Plaintiffs,

vs.

Edmund G. Brown, Jr., Secretary of
 State of the State of California and
 George H. Gnos, County Clerk for the
 County of Marin,

Defendants.

[Filed May 30, 1972]

CIVIL RIGHTS COMPLAINT FOR INJUNC-
 TIVE RELIEF, DECLARATORY JUDGMENT
 AND REQUEST FOR THE CONVENING
 OF A THREE-JUDGE COURT

Plaintiffs complain of defendants as follows:

I.

Jurisdiction of this Court is invoked under Article I, §2, and the First and Fourteenth Amendments to the United States Constitution and Title 28, United States Code, §§1331a, 1343(4), 1357, 2201, 2202, 2281, 2284; Title 42 of the United States Code, §§1981, 1983, 1985(3) and 1988. The amount in controversy exceeds \$10,000.

II.

Plaintiff Thomas Tone Storer, a native-born citizen who is over the age of 25 and is an inhabitant of California, is also a registered voter, unaffiliated with a political party, residing in Marin County, Sixth Congressional District, State of California. Plaintiff Storer is a candidate for the United States Congress, Sixth Congressional District, as an independent, in the November 7, 1972 general election and wishes to appear on that election ballot and be so designated.

III.

Plaintiff Elizabeth Johnson is a citizen of the United States, a resident of Marin County and a registered voter affiliated with the Democratic Party. Plaintiff Johnson is a supporter of plaintiff Storer who voted for him when he was a candidate for Supervisor of the County of Marin. She wishes to exercise her right to freedom of association and political involvement by actively supporting Storer's candidacy for Congress, voting for him in the November, 1972 election, and wishes his name to appear on the ballot.

IV.

Salle S. Soladay is a citizen of the United States, a resident of Marin Conty, and a registered voter affiliated with the Democratic Party. She is a supporter of plaintiff Storer and desires to exercise her right to freedom of association and political involvement by actively supporting Storer's candidacy for Congress, voting for him in the November, 1972 election, and wishes his name to appear on the ballot.

V.

Robert Fracchia is a citizen of the United States, a resident of Marin County, a registered voter affiliated with the Democratic Party and Student Body President of Terra Linda High School. He is a supporter of plaintiff Storer and wishes to exercise his right of association and political involvement by actively supporting Storer's candidacy for Congress, voting for him in the November, 1972 election, and wishes Storer's name to appear on the ballot.

VI.

Philip Drath is a citizen of the United States, a resident of Marin County and a registered voter affiliated with the Democratic Party. He is a supporter of plaintiff Storer and wishes to exercise his right of association and political involvement by actively supporting Storer's candidacy for Congress, voting for him in the November, 1972 election, and wishes Storer's name to appear on the ballot.

VII.

Defendant Edmund G. Brown, Jr., is, and at all relevant times mentioned herein was, the duly elected, qualified and acting Secretary of State of the State of California. Defendant George H. Gnos, is, and at all relevant times mentioned herein was, the duly elected County Clerk of the County of Marin. Defendants, at all times relevant to this action, have had the duty of certifying candidates for the United States Congress, Sixth Congressional District, in the general election of November 7, 1972, and of performing all official acts enabling qualified persons to appear on the ballot in the said election. At all relevant times herein mentioned defendants have acted, and continue to act, in concert and under color of state law.

VIII.

Plaintiff Storer is an attorney-at-law who is and has been politically active in Marin County and the Sixth Congressional District. In November of 1964 he was elected to the Board of Supervisors of Marin County after defeating an incumbent in a run-off election. In 1966 he sought the Democratic nomination for United States Congressman in the First Congressional District which then included Marin County. Storer won the nomination but was defeated by the incumbent Congressman at the general election. In 1968 plaintiff Storer sought re-election to the Board of Supervisors and was narrowly defeated.

IX.

Plaintiff Storer, for most of his political life, has been affiliated with the Democratic Party. In the past few years, however, he has been distressed at the quality of political leadership in the United States and has concluded that the situation will not improve as long as the Democratic and Republican Parties, which he feels are excessively controlled by money interests, dominate the country's political life. Plaintiff Storer made his disaffection with the Democratic Party formal by changing his registration from "Democrat" to "decline to state" in January of 1972.

X.

Plaintiff Storer is ready, willing and able to tender the filing fee required by California law of a candidate for Representative in the United States Congress and meet any other reasonable requirements for a position on the November ballot as an independent candidate. California statutory law, however, prohibits him from appearing on the general election ballot as an independent candidate for Congress in the following ways:

a) California Elections Code § 6830(d) prohibits any person who has been registered as affiliated with a political party at any time after June 6, 1971, from appearing on the ballot as an independent candidate. Plaintiff Storer, as noted above, was registered as affiliated with the Democratic Party until January of 1972;

b) California Elections Code § 6830(c) prohibits any one who has voted "at the immediately preceding

primary election at which a candidate was nominated for the office mentioned in the nomination paper" from running as an independent candidate for Congress. Storer intends to vote in the primary election of June 6, 1972, in order to exercise his franchise on non-partisan matters; but because nominees for the office of United States Representative from the Sixth Congressional District will be voted upon by partisan voters at that primary election, plaintiff Storer's exercise of his right to the franchise results in his being unable to appear on the ballot as an independent Congressional candidate:

c) California Elections Code §§ 6833, 6864 and 6831, in combined effect, make it virtually impossible for anyone to qualify as an independent candidate on the November election ballot:

1) § 6831 provides that plaintiff Storer's name may not appear on the ballot unless he acquires the signatures of not less than 5% nor more than 6% of the entire vote cast in the Sixth Congressional District in the preceding general election, in the case of the Sixth Congressional District that means 9,322 signatures;

2) §§ 6833 and 6864 provide that plaintiff Storer has but 24 days in which to acquire those signatures, he cannot circulate nomination petitions for voters signatures before August 15, 1972, and he must have acquired the requisite number of valid signatures by September 8, 1972;

3) California Elections Code § 6830(c) provides that no person may validly sign plaintiff Storer's nomination paper who voted in the primary election of June 6, 1972.

By contrast, a partisan candidate for Congress may appear on the primary ballot with no more than 40 signatures of sponsors and the persons signing his nominating papers are not excluded from doing so by virtue of their participation in any election.

XI.

Plaintiffs, and each of them, intend to vote in the primary election of June 6, 1972. Plaintiff Storer, as already noted, intends to mark his non-partisan ballot. Plaintiff Johnson intends to mark her Democratic ballot but does not intend to vote for either of the choices presented as Democratic nominee for Congress. Plaintiff Soladay intends to mark her Democratic ballot but does not intend to vote for either of the Democratic nominees for Congress. Plaintiff Fracchia intends to mark his Democratic ballot and intends to vote for one of the Democratic candidates seeking that party's nomination for Congress. Plaintiff Drath intends to mark his Democratic ballot and intends to vote for one of the candidates seeking that Party's nomination for Congress.

XII.

Plaintiffs Johnson, Soladay, Fracchia and Drath, and each of them, wish to sign the nomination papers of plaintiff Storer as an independent candidate for the office of Representative in the United States House but will be foreclosed from doing so because of their participation in the primary election. Said plaintiffs, and each of them, have signed no nomination papers for any other candidate for United States

Congressman in the primary election of June 6, 1972, or the general election of November 7, 1972.

XIII.

Plaintiffs are informed and believe and therefore allege that no one has ever been able to qualify as an independent candidate for a partisan office pursuant to the current provisions of the California Elections Code.

XIV.

Plaintiffs are informed and believe and therefore allege that defendants, and each of them, contend that the above-described statutory scheme inhibiting the access of independent candidates to the general election ballot is a constitutional exercise of state authority.

XV.

Unless restrained by this Court, defendants, and each of them, will deny plaintiff Storer a place on the ballot as an independent candidate in the election of November 7, 1972, for the sole reason that plaintiff Storer cannot comply with the aforementioned statutory provisions. This denial will abridge the following constitutional rights of plaintiff Storer:

- a) His fundamental constitutional right to seek and hold an office notwithstanding the absence of any compelling state interest supporting the statutory scheme;
- b) His right to equal protection of the laws guaranteed by the Fourteenth Amendment for the reason

that the above-described statutory requirements for an independent candidate constitute invidious discrimination unrelated to any legitimate governmental ends;

c) His right to due process of law in that the above-described requirements for independent candidacy are arbitrary and capricious and are unrelated to proper governmental purposes contrary to the Fourteenth Amendment, and

d) His right freely to express his views and effectively participate in the political processes of the United States and California as guaranteed by the First Amendment to the United States Constitution.

XVI.

Unless restrained by this Court, the defendants, and each of them, by requiring plaintiff Storer to comply with the above-described statutory scheme for independent candidates, will deprive plaintiffs Johnson, Soladay, Fracchia and Drath of the opportunity to vote and participate actively in the political processes on an equal basis in support of the candidate of their choice in the election for Representative from the Sixth Congressional District. As a consequence, their constitutional rights will be violated in the following respects:

a) Their right to equal protection of the laws and due process of the law guaranteed by the Fourteenth Amendment to the Constitution, will be abridged;

b) Their right to express their views, organize for political purpose, and effectively cast their ballots

will be abridged contrary to the First and Fourteenth Amendments to the United States Constitution.

XVII.

Plaintiffs, and each of them, have suffered and will continue to suffer irreparable harm as a result of the abrogation and denial of rights guaranteed to them by the Constitution of the United States. They cannot organize effectively around plaintiff Storer's candidacy until such time as defendants desist from requiring plaintiff Storer to comply with the above-described unconstitutional statutory scheme for independent candidacy in California. They will continue to suffer irreparable harm in the future so long as defendants require plaintiff Storer to comply with the above-described unconstitutional statutory scheme for independent candidacy in California.

For a second and distinct cause of action, plaintiffs incorporate by reference the allegations of paragraphs I through XIII of this complaint and further allege as follows:

XVIII.

California Elections Code §6830(d), by absolutely prohibiting plaintiff Storer from appearing on the ballot as a candidate for Representative to the United States Congress because he has, within the past year been affiliated with the Democratic Party, and California Elections Code §6830(c) by absolutely prohibiting plaintiff Storer from appearing on the ballot as a candidate for United States Representative if he votes in the primary election of June 6, 1972, un-

constitutionally add qualifications for Representative in the United States Congress not contained in, and inconsistent with, Article I, §2, Clause 2 of the United States Constitution.

XIX.

The addition of qualifications for Representative in the United States Congress not contained in Article I, §2, Clause 2 of the United States Constitution violate rights guaranteed to plaintiffs, and each of them, by Article I, §2, Clause 2, of the Constitution.

XX.

Plaintiffs are informed and believe and therefore allege that defendants, and each of them, contend that the absolute prohibition on plaintiff Storer's candidacy provided by §§6830(c) and (d) of the California Elections Code is a constitutional exercise of state power and that, unless restrained by this Court, defendants will prohibit plaintiff Storer from appearing as an independent candidate for United States Congress in the Sixth Congressional District because of his inability to comply with §§6830(c) and (d).

XXI.

There is an actual controversy existing which this Court may and properly should adjudicate at this time.

Wherefore, plaintiffs pray as follows:

1. For the convening of a three-judge court to hear and determine the controversy;

2. That California Elections Code §§6830(c) and (d), 6831, 6833 and 6864 be declared unconstitutional, void and a nullity by virtue of conflict with the First and Fourteenth Amendments to the United States Constitution;

3. That subsections (d) and (e) of the California Elections Code §6830 be declared unconstitutional, void and a nullity by virtue of conflict with Article I, §2, Clause 2 of the United States Constitution;

4. That defendants, and each of them, their agents, representatives, alternates, successors and anyone connected therewith be enjoined from directly or indirectly enforcing California Elections Code §§6830(c) and (d), 6831, 6833 and 6864 for the reasons mentioned above in paragraphs "2." and "3.";

5. That, upon plaintiff Storer's tendering of the statutory filing fee and the presentation by him of a nomination petition signed by at least forty electors qualified to vote in the Sixth Congressional District, defendants, and each of them, their agents, representatives, alternates, successors, and anyone connected therewith, be enjoined from, directly or indirectly, refraining to certify plaintiff Storer as a candidate for United States Representative in California's Sixth Congressional District and refraining from placing plaintiff Storer's name on the November 7, 1972, general election ballot as a candidate for United States Representative in the said Sixth District;

6. That, pending a full evidentiary hearing at which a permanent injunction will be sought, a pre-

liminary injunction be issued granting plaintiffs the relief for which they pray in the immediately preceding paragraph (paragraph "5.");

7. That plaintiffs be granted their costs in this suit;

8. That this Court grant such other and further relief as is just and proper in the premises.

Dated: May 30, 1972

Respectfully submitted,
 Paul N. Halvonik
 Charles C. Marson
 Peter E. Sheehan
 By Paul N. Halvonik
 Attorneys for Plaintiffs

Verification

State of California

City and County of San Francisco—ss

Thomas Tone Storer, being duly sworn, deposes and says:

That he is one of the plaintiffs in the foregoing Complaint for Injunctive Relief; that he has read the complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information and belief, and as to those matters he believes it to be true.

/s/ Thomas Tone Storer

Thomas Tone Storer

Subscribed and sworn to before me

this 30th day of May, 1972.

/s/ Pamela S. Ford

(Seal)

Pamela S. Ford, Notary Public

In and for the City and County of

San Francisco, State of California

My Commission Expires December 30, 1975

United States District Court For The
Northern District of California

No. C 72-978 AJZ

Thomas T. Storer, et al.,	} Plaintiff,
vs.	
Edmund G. Brown, Jr., et al.,	
	Defendant.

[Filed July 13, 1972]

REASSIGNMENT OF CAUSE

Good Cause Appearing Therefor,

It is Ordered that the above-entitled cause is re-assigned to Robert H. Schnacke for all further proceedings.

Dated: July 13, 1972

Transferring Judge
/s/ Robert H. Schnacke
Accepting Judge

Approved by the Assignment Committee:
by: /s/ Oliver J. Carter
Chief Judge

**MEMORANDUM WITH REFERENCE TO
THOMAS T. STORER et al. vs. EDMUND
G. BROWN, JR., et al. No. C 72-978-RHS**

District Judge Alfonso J. Zirpoli received the complaint in the above-entitled case and certified it as a case appropriate for a three-judge district court to be appointed by the chief judge of the Ninth Circuit.

Soon thereafter, Judge Zirpoli became incapacitated probably for several weeks.

Chief Judge Oliver J. Carter, deeming the case to be one requiring attention at a reasonably early date, caused another district judge to be drawn by lot to replace Judge Zirpoli as the "receiving" judge. The name drawn was District Judge Robert H. Schnacke.

If any party has any objection under applicable statutes to the replacement of Judge Zirpoli by Judge Schnacke, he will file it no later than seven days after the date of the filing of this order in the district court clerk's office.

/s/ Richard H. Chambers
Chief Judge, Ninth Circuit

ORDER DESIGNATING UNITED STATES
CIRCUIT JUDGE AND UNITED STATES
DISTRICT JUDGES PURSUANT TO §2284,
TITLE 28, UNITED STATES CODE

Whereas in my judgment the public interest so requires, I, pursuant to the provisions of §2284, Title 28, United States Code, do hereby designate and appoint the

Honorable Oliver D. Hamlin,
United States Circuit Judge for the Ninth Circuit,
and the

Honorable Robert H. Schnacke,
United States District Court for the Northern District of California, and the

Honorable William G. East,
Senior United States District Judge for the District of Oregon, to hold district court for the Northern District of California at a time and place to be agreed upon by said judges, and to hear and determine the following cause:

Thomas T. Storer v. Edmund G. Brown, Jr.,
C-72-978,

and all motions and proceedings therein.

Dated: July 14, 1972.

/s/ Richard H. Chambers
Chief Judge, Ninth Circuit

IM

cc: Judge Hamlin
cc: Judge Schnacke
cc: Judge East
cc: Clerk, N.Cal.
cc: Clerk, 9 CA
cc: Clerk, Ore.

Paul N. Halvonik
Charles C. Marson
Peter E. Sheehan

American Civil Liberties Union Foundation
of Northern California, Inc.
593 Market Street, Suite 227
San Francisco, California 94105
Telephone: 433-2750
Attorneys for Plaintiffs

—
In The United States District Court
For The Northern District of California
—

No. C-72-978 AJZ
—

Thomas Tone Storer, et al.,	} Plaintiffs,
vs.	
Edmund G. Brown, Jr., et al.,	} Defendants.

[Filed August 7, 1972]

NOTICE OF MOTION
and

MOTION FOR PRELIMINARY INJUNCTION

To the above-named Defendants, and to the Governor
and Attorney General of the State of California:

Please Take Notice that on August 31, 1972, at
2:00 P.M., or as soon thereafter as counsel can be

heard, in Courtroom No. 5 at 450 Golden Gate Avenue, San Francisco, California, plaintiffs will move for an order preliminarily enjoining defendants, and each of them, their agents, representatives, alternates, successors, and anyone connected therewith, from, directly or indirectly, refraining to certify plaintiff Storer as a candidate for United States Representative in California's Sixth Congressional District and refraining from placing plaintiff Storer's name on the November 7, 1972 general election ballot as a candidate for United States Representative in the Sixth District upon plaintiff Storer's tendering of the statutory filing fee and the presentation by him of a nomination petition signed by at least 40 electors qualified to vote in the Sixth Congressional District.

Said Motion will be based upon this Notice and Motion, the Memorandum of Points and Authorities on file herein, and upon all of the pleadings and papers filed herein.

Dated: August 2, 1972

Respectfully submitted,

Paul N. Halvonik

Charles C. Marson

Peter E. Sheehan

By Charles C. Marson

Attorneys for Plaintiffs

Evelle J. Younger, Attorney General
of the State of California

Iver E. Ekjeie

Assistant Attorney General

Clayton P. Roche

Deputy Attorney General

6000 State Building

San Francisco, California 94102

Telephone: (415) 557-1586

Attorneys for Defendant

Secretary of State

United States District Court For The
Northern District of California

No. C-72-978 AHS

Thomas Tone Storer, et al.,

Plaintiffs,

vs.

Edmund G. Brown, Jr., etc., et al.,

Defendants.

Laurence H. Frommhagen, etc., et al.,

Plaintiffs in Intervention,

vs.

Tom M. Kelley, etc.,

Defendant in Intervention.

DEFENDANT SECRETARY OF STATE'S
OPPOSITION TO PRELIMINARY
INJUNCTION
and
MOTION TO DISMISS THE ACTION
(Before Three-Judge Court)

Defendant Secretary of State moves this Court to dismiss the action on the following grounds:

1. The complaints of plaintiffs and intervenors fail to state a claim against the defendant upon which relief can be granted;
2. The plaintiffs and intervenors are guilty of laches;
3. The complaints fail to join necessary and indispensable parties, to wit, the candidates in the Sixth and Twelfth Congressional Districts.

Defendant Secretary of State opposes the granting of a preliminary injunction on the same above-stated grounds and the additional grounds that:

1. A preliminary injunction should not be granted in that it would provide the ultimate relief requested; and
2. A preliminary injunction should not be granted in that in balancing the equities, nine million California voters have the right to an election undisrupted by eleventh-hour lawsuits.

Dated: August 18, 1972.

Respectfully submitted,

Evelle J. Younger, Attorney General
of the State of California

Iver E. Skjeie

Assistant Attorney General

/s/ Clayton P. Roche

Clayton P. Roche

Deputy Attorney General

Attorneys for Defendant
Secretary of State

Affidavit Of Thomas Tone Storer

Thomas Tone Storer, attorney at law, after first being duly sworn does swear and state that:

He does seek to be an independent candidate for the United States Congress, Sixth Congressional District, State of California;

On September 5, 1972, Thomas Tone Storer did call the elections department, County of Marin, State of California, and spoke with the head of said department, Peter C. Meyer;

Thomas Tone Storer did at that time ask Mr. Meyer if he, Mr. Storer, could take out nomination papers as an independent candidate for Congress in the Sixth Congressional District;

Peter C. Meyer replied, "You can not take out nomination papers as an independent candidate for Congress in the Sixth congressional District because you have been a registered Democrat within two (2) years of the most recent primary."

Dated: September 6, 1972

/s/ Thomas Tone Storer
Thomas Tone Storer

State of California
County of Marin—ss.

On September 6, 1972 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Thomas Tone Storer, Attorney at Law, known to me to be the person whose name

is subscribed to the within instrument and acknowledged that he executed the same.

(Seal) /s/ Wanda Willey
Wanda Willey
Notary Public—California
County of Marin

My Commission Expires September 21, 1972

DOCKET ENTRIES

Docket 72-1468

Filed 8-11-72

**In the United States District Court
for the Northern District of California**

**(3 Judge Court—
Judges Hamlin, Schnacke & East)**

**Gus Hall, Jarvis Tyner,
Albert J. Lima, Margaret Wilkinson,
Juan Lopez, and Joe Graham,
Plaintiffs**

vs.

**Edmund G. Brown, Jr.
Secretary of State of the
State of California
Defendants**

—Attorneys—

**Charles C. Marson & Peter E. Sheehan
Amer. Civil Liberties Union
Foundation of No. Calif. Inc.
593 Market St., Suite 227
San Francisco, CA 94105**

**Attorney General
State of California
6000 State Building
San Francisco, CA 94102**

—Cause—

Civil Rights

Related to Case C-72-978

Aug. 11—

1. Filed complaint, issued summons
2. Filed Ord. for serv. other than U.S. Marshall to Harold Goff
3. Filed notice of Requirement of Three-Judge Court.

Aug. 15—

4. Filed Pltf's Notice and mo for preliminary injunction hrg on 9/8/72 @ SAW

Aug. 16—

5. Filed notice of convening 3 judge Court, Notice mailed to Parties of recor and Judge Richard Chambers CCA.

Clerk

Aug. 18—

6. Filed deft's notice of related case to 72-978
RHS

Aug. 21—

7. *Filed Ord. of 9th. CCA appointing and designating Hon. Oliver D. Hamlin of 9th. CCA, Hon. William T. Sweigert of No. Dist. Calif., and Hon. William G. East of Dist. of Oreg. to hold Three Judge Court. (Chambers C.J.)*

Aug. 23—

8. *Filed ORD reassigning as related case to Judge Schnacke*

Aug. 25—

9. Filed Amended ORD designating 3-Judge Ct:
Judge Sweigert replaced by Judge Schnacke
Mailed file folders to 3 Judges (ODH, RHS,
WGE) (clerk)
10. Filed deft's opp to pre-injn & mo to dismiss
11. Filed deft's pts & auths in opp to granting of
pre-injn & in supp of mo to dismiss

Sept. 6—

12. Filed Stip. & ORD: (1) oral arg waived by
both sides; (2) all common questions will
abide by result of *Storer v. Brown* (72-978);
(3) any spec questions or issues not raised by
Storer case are submt'd for determ of Ct. on
briefs already filed herein. —RHS

Sept. 8—

Filed Opinion and Order: defts mos to dis-
miss in this action and in C-72-978 are
Granted and Actions are Dismissed. (In
72-978)

(—RHS, ODH, Jr.) (WGE concurred but did
not sign)

Sept. 13—

Filed Notice of Appeal to US Supreme Court
(In 72-978) (w/designation)

Sept. 18—

Mailed not. to counsel of filing appeal

Sept. 21—

13. Filed appellee's designation of record

Oct. 19-72—

Made, Mailed Record On Appeal To Supreme
Court Of The United States by Certified Mail
Receipt No. 224332

I hereby certify that the annexed instrument is a
true and correct copy of the original on file in my
office.

ATTEST:

CHARLES J. ULFERS

Clerk, U. S. District Court
Northern District of California

By /s/(illegible)

Deputy Clerk

Dated October 19, 1972

Charles C. Marson
 Peter E. Sheehan
 American Civil Liberties Union Foundation
 of Northern California, Inc.
 593 Market Street, Suite 227
 San Francisco, California 94105
 Telephone: 433-2750
 Attorneys for Plaintiffs

In The United States District Court
 For The Northern District of California

Category: Civil Rights

No. C-72-1468 WTS

Gus Hall, Jarvis Tyner, Albert J. Lima,
 Margaret Wilkinson, Juan Lopez, and
 Joe Graham,
 Plaintiffs,

vs.

Edmund G. Brown, Jr., Secretary of
 State of the State of California,
 Defendant.

[Filed August 11, 1972]

COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF

Plaintiffs complain of defendants as follows:

I.

Jurisdiction of this Court is invoked under the First and Fourteenth Amendments to the United States Constitution and Title 28, United States Code, §§ 1331(a), 1343(4), 1357, 2201, 2202, 2281, 2284; Title 42 of the United States Code, §§ 1981, 1983, 1985(3) and 1988. The amount in controversy exceeds \$10,000.

II.

Plaintiff Gus Hall is a native-born citizen who is over the age of 35 and who has been a resident of the United States during the last fourteen years. He has been and is now a member of the Communist Party of the United States, which does not qualify as a "political party" under the requirements of California Elections Code §6430. Plaintiff Hall is a candidate for the office of President of the United States in the November 7, 1972 general election. He wishes to run as an independent candidate for that office in the State of California and to be so designated on the election ballot.

III.

Plaintiff Jarvis Tyner, a native-born citizen who is 31 years of age and who has been a resident of the United States during the last fourteen years, has been and is a member of the Communist Party of the United States, which does not qualify as a "political party" under the requirements of California

Elections Code §6430. Plaintiff Tyner, who is a candidate for the office of Vice President of the United States in the November 7, 1972 general election, wishes to run as an independent candidate for that office in the State of California and to be so designated on the election ballot.

IV.

Plaintiff Margaret Wilkinson is a citizen of the United States, a resident of the State of California and a registered voter affiliated with the Democratic Party. Plaintiff Wilkinson is a supporter of plaintiffs Hall and Tyner and wishes to exercise her right to freedom of association and political involvement by actively supporting Hall's and Tyner's candidacies for President and Vice President, respectively, and by voting for them in the November, 1972 election, and wishes their names to appear on the ballot.

V.

Plaintiff Albert P. Lima is a citizen of the United States, a resident of the State of California and a registered voter affiliated with the Communist Party of the United States. Plaintiff Lima is a supporter of plaintiffs Hall and Tyner and wishes to exercise his right to freedom of association and political involvement by actively supporting Hall's and Tyner's candidacies for President and Vice President, respectively, and by voting for them in the November 1972 election, and wishes their names to appear on the ballot.

VI.

Plaintiffs Juan Lopez and Joe Graham are citizens of the United States, residents of the State of California and registered voters affiliated with La Raza Unida Party. Plaintiffs Lopez and Graham are supporters of plaintiffs Hall and Tyner and wish to exercise their rights to freedom of association and political involvement by actively supporting Hall and Tyner for the offices of President and Vice President, respectively, and by voting for them in the November 1972 election, and desire Hall's and Tyner's names to appear on the ballot.

VII.

Defendant Edmund G. Brown, Jr., is, and at all relevant times referred to herein has been, the duly elected, qualified and acting Secretary of State of the State of California. Defendant, at all times relevant to this action, has had the duty of certifying candidates for the offices of President and Vice President of the United States in the general election of November 7, 1972, and of performing all official acts enabling qualified persons to appear on the ballot in the said election. At all relevant times, defendant has acted, and continues to act, under color of state law.

VIII.

Plaintiff Hall and Tyner are ready, willing and able to tender the filing fees required by California law of candidates for President and Vice President of the United States, respectively, and to meet any

other reasonable requirements for positions on the November ballot as an independent candidate. California statutory law, however, prohibits them from appearing on the general election ballot as independent candidates in the following way: California Elections Code §§6830, 6833, 6864 and 6831, in combined effect, make it virtually impossible for anyone to qualify as an independent candidate on the November election ballot in that:

1) §6831 provides that plaintiff Hall's name and plaintiff Tyner's name may not appear on the ballot unless they acquire the signatures of not less than 5% nor more than 6% of the entire vote cast in the State of California in the preceding general election; in this case, that means more than 325,000 signatures.

2) §§6833 and 6864 provide that plaintiffs Hall and Tyner have but 24 days in which to acquire those signatures, they cannot circulate nomination petitions for voters' signatures before August 15, 1972, and they must have acquired the requisite number of valid signatures by September 8, 1972.

3) California Elections Code §6830(c) provides that no person may validly sign plaintiff Hall's or plaintiff Tyner's nomination papers who voted in the primary election of June 6, 1972.

By contrast, §6082 provides that a partisan candidate may appear on the primary ballot with no more than .5% of the vote cast for that party's candidate for Governor in the 1970 gubernatorial elections; in the case of Senator George McGovern, the Democratic candidate for the Presidency, less than

15,000 signatures were required; in the case of President Richard Nixon, the Republican candidate for the Presidency in the 1972 election, less than 18,000 signatures were required. Furthermore, no person is excluded from signing the nominating papers of a partisan candidate by virtue of his participation in any election.

IX.

Plaintiffs Wilkinson and Graham did participate in the June 6, 1972 Democratic primary election; although Graham did not vote for any of the nominees for the office of President, they did mark their ballots on other issues.

X.

Plaintiffs Wilkinson and Graham wish to sign the nomination papers of plaintiff Hall as an independent candidate for the office of President of the United States and of plaintiff Tyner as an independent candidate for the office of Vice President of the United States. They will be foreclosed from doing so because of their participation in the primary election. Said plaintiffs have signed no nomination papers for any other candidate for either of the abovementioned offices in the primary election of June 6, 1972, or in the general election of November 7, 1972.

XI.

Plaintiffs Lima, Wilkinson, Lopez and Graham wish to vote for plaintiff Hall as an independent candidate for President of the United States and for

plaintiff Tyner as an independent candidate for Vice President of the United States. They will be foreclosed from doing so because of the existence of California Elections Code §§ 6833, 6834, and 6830(c), which make it effectively impossible for any person to qualify as an independent candidate for either of these offices. Plaintiffs Lima, Wilkinson, Lopez and Graham have signed no nomination papers for any other candidate for either of the abovementioned offices in the primary election of June 6, 1972, or in the general election of November 7, 1972.

XII.

Plaintiffs are informed and believe and therefore allege that defendant contends that the above-mentioned statutory scheme inhibiting the access of independent candidates to the general election ballot is a constitutional exercise of state authority.

XIII.

Unless restrained by this Court, defendant will deny plaintiffs Hall and Tyner a place on the ballot as independent candidates in the election of November 7, 1972, for the sole reason that plaintiffs Hall and Tyner cannot comply with the aforementioned statutory provisions. This denial will abridge the following constitutional rights of plaintiffs Hall and Tyner:

- a) their fundamental constitutional right to seek and hold offices notwithstanding the absence of any compelling state interest supporting the statutory scheme;

b) their right to equal protection of the laws guaranteed by the Fourteenth Amendment for the reason that the above-described statutory requirements for an independent candidate constitute invidious discrimination unrelated to any legitimate governmental ends;

c) their right to due process of law in that the above-described requirements for independent candidacy are arbitrary and capricious and are unrelated to proper governmental purposes contrary to the Fourteenth Amendment, and

d) their right freely to express their views and effectively participate in the political processes of the United States and California as guaranteed by the First Amendment to the United States Constitution.

XIV.

Unless restrained by this Court, the defendant, by requiring plaintiffs Hall and Tyner to comply with the above-described statutory scheme for independent candidates, will deprive plaintiffs Lima, Wilkinson, and Lopez of the opportunity to vote and participate actively in the political processes on an equal basis in support of the candidates of their choice in the election for President and Vice President of the United States. As a consequence, their constitutional rights will be violated in the following respects:

a) their right to equal protection of the laws and due process of the law guaranteed by the Fourteenth Amendment to the Constitution, will be abridged;

b) their right to express their views, organize for political purpose, and effectively cast their ballots will be abridged contrary to the First and Fourteenth Amendments to the United States Constitution.

XV.

Plaintiffs, and each of them, have suffered and will continue to suffer irreparable harm as a result of the abrogation and denial of rights guaranteed to them by the Constitution of the United States. They cannot organize effectively around the candidacies of plaintiffs Hall and Tyner until such time as defendant desists from requiring plaintiffs Hall and Tyner to comply with the above-described unconstitutional statutory scheme for independent candidacy in California. They will continue to suffer irreparable harm in the future so long as defendant requires plaintiffs Hall and Tyner to comply with the above-described unconstitutional statutory scheme for independent candidacy in California.

XVI.

Plaintiffs are informed and believe and therefore allege that defendant contends that the absolute prohibition on plaintiff Hall's and plaintiff Tyner's candidacies provided by §6830(c) of the California Elections Code is a constitutional exercise of state power and that, unless restrained by this Court, defendant will prohibit plaintiffs Hall and Tyner from appearing as independent candidates for the offices of President and Vice President of the United States,

respectively, because of their inability to comply with §6830(c).

XVII

There is an actual controversy existing which this Court may and properly should adjudicate at this time.

Wherefore, plaintiffs pray as follows:

1. For the convening of a three-judge court to hear and determine the controversy;

2. That California Elections Code §§6830(c), 6831, 6833, and 6864 be declared unconstitutional, void and a nullity by virtue of conflict with the First and Fourteenth Amendments to the United States Constitution;

3. That defendant, his agents, representatives, alternates, successors and anyone connected therewith be enjoined from directly or indirectly enforcing California Elections Code §§6830(c), 6831, 6833, and 6864 for the reasons mentioned above in paragraph "2";

4. That, upon plaintiff Hall's and plaintiff Tyner's tendering of the statutory filing fee and the presentation by them of a nomination petition signed by at least 18,000 electors qualified to vote in the State of California, defendant, his agents, representatives, alternates, successors, and anyone connected therewith, be enjoined from, directly or indirectly, refraining to certify plaintiffs Hall and Tyner as independent candidates for President and Vice President of the United States, respectively, and refraining from

placing the names of plaintiffs Hall and Tyner on the November 7, 1972 general election ballot as candidates for the abovementioned offices;

5. That, pending a full evidentiary hearing at which a permanent injunction will be sought, a preliminary injunction be issued granting plaintiffs the relief for which they pray in the immediately preceding paragraph (paragraph "4");

6. That plaintiffs be granted their costs in this suit;

7. That this Court grant such other and further relief as is just and proper in the premises.

Dated: August 11, 1972

Respectfully submitted,

Charles C. Marson

Peter E. Sheehan

By Charles C. Marson

Attorneys for Plaintiffs

Verification

State of California

City and County of San Francisco—ss.

Albert J. Lima, being duly sworn, deposes and says:

That he is one of the plaintiffs in the foregoing Complaint for Injunctive Relief; that he has read the complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information and belief, and as to those matters he believes it to be true.

Albert J. Lima

Subscribed and sworn to before me
this 11th day of August, 1972.

Pamela S. Ford, Notary Public

In and for the City and County of
San Francisco, State of California.

Charles C. Marson

Peter E. Sheehan

American Civil Liberties Union Foundation
of Northern California, Inc.

593 Market Street, Suite 227

San Francisco, California 94105

Telephone: 433-2750

Attorneys for Plaintiffs

In the United States District Court
for the Northern District of California

No. C-72-1468 WTS

Gus Hall, et al.,

Plaintiffs,

vs.

Edmund G. Brown, Jr.,

Defendant.

NOTICE OF REQUIREMENT OF THREE-JUDGE COURT

Pursuant to Rule 17(b) of this Court's Local Rules of Practice, plaintiffs hereby give notice that this action is required by 28 U.S.C., Section 2281 to be heard and determined by a district court of three judges, in that the action seeks to restrain the enforcement, operation and execution of state statutes for repugnance to the Constitution of the United States.

Dated: August 11, 1972

Respectfully submitted,

Charles C. Marson

Peter E. Sheehan

By Charles C. Marson

Attorneys for Plaintiffs

Charles C. Marson
 Peter E. Sheehan
 American Civil Liberties Union Foundation
 of Northern California, Inc.
 593 Market Street, Suite 227
 San Francisco, California 94105
 Telephone: 433-2750
 Attorneys for Plaintiffs

In the United States District Court
 for the Northern District of California

No. C-72-1468 WTS

Gus Hall, et al.,	} Plaintiffs,
vs.	
Edmund G. Brown, Jr.,	
	} Defendant.

NOTICE OF MOTION
 and
 MOTION FOR PRELIMINARY INJUNCTION
 To The Above-Named Defendant, And To The Governor And Attorney General Of The State Of California:

Please Take Notice that on September 8, 1972, at 10:00 A.M., in the Courtroom of the Honorable William T. Sweigert, United States District Judge, 450 Golden Gate Avenue, San Francisco, California, plaintiffs will move for a preliminary injunction en-

joining defendant, his agents, representatives, alternates, successors and anyone connected therewith from, directly or indirectly, enforcing California Elections Code §§66830(c) [sic—§6830(c)], 6831, 6833, and 6684 [sic—§6864]; and enjoining defendant, his agents, representatives, alternates, successors, and anyone connected therewith, from directly or indirectly, refraining to certify plaintiffs Hall and Tyner as independent candidates for President and Vice President of the United States, respectively, and refraining from placing the names of plaintiffs Hall and Tyner on the November 7, 1972 general election ballot as candidates for the abovementioned offices upon plaintiff Hall's and plaintiff Tyner's tendering of the statutory filing fee and the presentation by them of a nomination petition signed by at least 18,000 electors qualified to vote in the State of California.

Said Motion will be based upon this Notice and Motion, the Memorandum Re: Preliminary Injunction on file herein, and upon all of the pleadings and papers filed herein.

Dated: August 11, 1972

Respectfully submitted,

Charles C. Marson

Peter E. Sheehan

By Charles C. Marson

Attorneys for Plaintiffs

United States District Court
Northern District of California

No. C 72-1468 WTS

Gus Hall, et al.,

Plaintiffs,

vs.

Edmund G. Brown, Jr.,

Defendant.

[Filed August 16, 1972]

NOTICE RE CONVENING OF
THREE JUDGE COURT
(28 U.S.C. Sec. 2284)

It appearing to the court that the above-entitled action prays for an interlocutory and/or permanent injunction restraining the enforcement, operation and execution of a State statute, to wit: California Elections Code Secs. 6830(c), 6831, 6833, and 6864, upon the ground of the unconstitutionality of said statutes and that said action is one required by an Act of Congress, to wit: Title 28 U.S.C. Sec. 2281, to be heard and determined by a district court of three judges;

Now, Therefore, as provided by Title 28 U.S.C. Sec. 2284, the Chief Judge of the Ninth Circuit is hereby notified of such application.

No temporary restraining order has been applied for. An application for Preliminary Injunction has been noticed for September 8, 1972, at 10:00 A.M.

The Clerk of this court shall forthwith forward this notice as provided by Title 28 U.S.C. Sec. 2284.

Dated: August 16, 1972.

/s/ W. T. Sweigert

W. T. Sweigert

United States District Judge

United States District Court
for the Northern District of California

IN THE MATTER OF

C 72-1468 WTS

Gus Hall, et al. v. Edmund G. Brown, Jr.

C 72-978 RHS

Thomas Tone Storer, et al. v. Edmund G. Brown, et al.

[Filed Aug. 23, 1972]

REASSIGNMENT ORDER

(Assignment Plan (h) (3))

It appearing to the Assignment Committee that the above cases are related within the meaning of Rule 101 and that the earliest filed of said related cases, to wit, No. C 72-978 RHS has been assigned to Judge Robert H. Schnacke.

It Is Hereby Ordered that all of the above-entitled cases be reassigned to Judge Robert H. Schnacke for all further proceedings as provided by Assignment Plan (h)(3).

Dated: August 23, 1972

The Assignment Committee

By: Robert H. Schnacke Chief Judge

Evelle J. Younger, Attorney General
of the State of California

Iver E. Skjeie

Assistant Attorney General

Clayton P. Roche

Deputy Attorney General

6000 State Building

San Francisco, California 94102

Telephone: (415) 557-1586

Attorneys for Defendant

Secretary of State

United States District Court
Northern District of California

No. C-72-1468 RHS

Gus Hall, et al.,

Plaintiffs,

vs.

Edmund G. Brown, Jr.,

Defendant.

**DEFENDANT SECRETARY OF STATE'S
OPPOSITION TO
PRELIMINARY INJUNCTION
and
MOTION TO DISMISS THE ACTION
(Before Three-Judge Court)**

Defendant Secretary of State moves this Court to
dismiss the action on the following grounds:

1. The complaint fails to state a claim against the defendant upon which relief can be granted;
2. The plaintiffs are guilty of laches;
3. The complaint fails to join indispensable parties;
4. The plaintiffs lack standing to sue.

Defendant Secretary of State opposes the granting of a preliminary injunction on the same above-stated grounds and the additional grounds that:

1. A preliminary injunction should not be granted in that it would provide the ultimate relief requested; and
2. A preliminary injunction should not be granted in that in balancing the equities, nine million California voters have the right to an election undisrupted by eleventh-hour lawsuits.

Dated: August 25, 1972.

Respectfully submitted,
 Evelle J. Younger, Attorney General
 of the State of California

Iver E. Skjeie
 Assistant Attorney General

/s/ Clayton P. Roche
 Clayton P. Roche
 Deputy Attorney General
 Attorneys for Defendant
 Secretary of State

Evelle J. Younger, Attorney General
of the State of California

Iver E. Skjeie
Assistant Attorney General

Clayton P. Roche
Deputy Attorney General
6000 State Building
San Francisco, California 94102
Telephone: (415) 557-1586

Attorneys for Defendant
Secretary of State

United States District Court
Northern District of California

No. C-72-1468 WTS

Gus Hall, et al.,

vs.

Edmund G. Brown, Jr.,

Plaintiffs,

Defendant.

NOTICE OF RELATED CASES
(L.R. 101)

To The Above-Entitled Court:

On August 17, 1972, the undersigned received the Court's "Notice Re Convening of Three Judge Court" in the above matter. The Secretary of State was also served in the above-entitled action on August 16, 1972, a copy of which was received today in San Francisco.

The above captioned case, filed August 11, 1972, *Gus Hall, et al. v. Edmund G. Brown, Jr.*, No. C-72-1468 WTS and assigned to Judge Sweigert, attempts to enjoin California Elections Code sections 6830(c), 6831, 6833 and 6864 on grounds of unconstitutionality; and

Thomas Tone Storer, et al. v. Edmund G. Brown, et al., No. C-72-978 RHS attempts to enjoin California Elections Code sections 6830(c) and (d), 6831, 6833 and 6864 on grounds of unconstitutionality. This latter action was filed May 30, 1972, and is set for hearing before a Three Judge Court (Judges Schnacke, Hamlin and East) on August 31, 1972.

These are related cases. Both cases, which were filed by the same attorneys, raise substantially the same constitutional issues.

Dated: August 18, 1972.

Respectfully submitted,
Evelle J. Younger, Attorney General
for the State of California
Iver E. Skjeie
Assistant Attorney General
/s/ Clayton P. Roche
Clayton P. Roche
Deputy Attorney General
Attorneys for Defendant
Secretary of State

Laurence H. Frommhagen

In Propria Persona

P.O. Box 326

Soquel, California 95073

John R. Stevens, Jr.

Wendy R. Stevens

In Propria Persona

5748 Old San Jose Road

Santa Cruz, California 95060

Jeanne Tarr

In Propria Persona

5192 Old San Jose Road

Santa Cruz, California 95060

Mary Prochnow

In Propria Persona

5020 Garnett Street

Capitola, California 95010

Charles W. Mercer

In Propria Persona

219 Claudius Drive

Aptos, California 95003

United States District Court
for the Northern District of California
No. C - 72 - 978 - AJZ

Thomas Tone Storer, as independent
candidate for Congress, in the Sixth
Congressional District,

and

Elizabeth Johnson, Salle S. Soladay,
Robert Fracchia and Philip Drath,
as supporters of Plaintiff Thomas
Tone Storer,

Plaintiffs,

Laurence H. Frommhagen, as inde-
pendent candidate for Congress in
the Twelfth Congressional District,

and

John R. Stevens, Wendy R. Stevens,
Jeanne Tarr, Mary Prochnow and
Charles W. Mercer, as supporters of
Plaintiff Laurence H. Frommhagen,
Proposed Plaintiffs,

vs.

Edmund G. Brown, Jr., as the Secre-
tary of State of the State of Cali-
fornia and George H. Gness, as
County Clerk for the County of
Marin, State of California,

Defendants,

Tom M. Kelley, as County Clerk for
the County of Santa Cruz, State of
California,

Proposed Defendant.

NOTICE OF MOTION
MOTION FOR INTERVENTION
OF PLAINTIFFS

Notice of Motion

To the attorneys for the defendants and proposed defendant:

Please Take Notice that the above-named proposed plaintiffs will make the following motion at 1:30 P.M. on Tuesday, June 27, 1972, before the Honorable Alfonso J. Zirpoli, Judge Presiding, at the United States Court House, 450 Golden Gate Avenue, San Francisco, California 94102.

* * * * *

Motion For Intervention of Plaintiffs

The above-named proposed plaintiffs respectfully request this Court to enter an order approving the intervention by the proposed plaintiffs, pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, in the instant action.

The applicants' claims and the main action have a question of law in common, and this intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

The proposed plaintiffs hereinafter plead the claim for which intervention is sought.

I.

Applicants reallege and incorporate by reference the claim as to the jurisdiction of this Court in paragraph 1 of the Complaint in *Storer et al. v. Brown et al.* No. C-72-978-AJZ, United States District Court for the Northern District of California.

II.

Plaintiff Laurence H. Frommhagen who is over the age of 25 years and is a resident in the Twelfth Congressional District, is a registered voter, unaffiliated with a political party. Plaintiff Frommhagen is a candidate for the United States Congress, Twelfth Congressional District, as an independent, in the November 7, 1972, general election and wishes to appear on that election ballot and be so designated.

Plaintiff Frommhagen, whose roots were those of a liberal member of the Republican Party, was a registered Republican and an advisor to Ronald Reagan during the election of 1966. He was so disappointed by the positions and mediocre performance of Governor Reagan and by Reagan's conservative polarization of the Republican Party (just as he has recently been disillusioned by the radical polarization of the Democratic Party) that he changed his political affiliation to that of the Democratic Party in 1969 and, in March of this year, changed his registration to "decline to state."

Frommhagen has been a consultant to the California Legislature and the United States Congress in the areas of public health and space sciences, and in that role, has been critical of the fiscal excesses, disordered priorities, and uneven performance in those activities of the state and federal governments. During the past several years he has become increasingly distressed by the quality of political leadership in the United States, by the domination of the Republican and Democratic Parties by corporate and labor money

interests, and by a dangerous drift of the United States into a parafascist state permitted and encouraged by both major parties. Frommhagen is convinced that the only way that the United States will survive as a democracy is for many more citizens to become involved, not for political gain, but from a high sense of objectivity and compassion in the affairs of their country at every level of its government. See Exhibit 1.

III.

Applicants propose to designate as an additional defendant in this action Tom M. Kelley, who is, and at all relevant times mentioned herein was, the duly elected County Clerk of the County of Santa Cruz. Said proposed defendant, at all times relevant to this action, has had the duty of certifying candidates for the United States Congress, Twelfth Congressional District, in the general election of November 7, 1972, and of performing all official acts enabling qualified persons to appear on the ballot in the said election.

IV.

The following plaintiffs, supporters of plaintiff Frommhagen, are each and everyone citizens of the United States and are registered voters in the Twelfth Congressional District. They all wish to exercise their right of association and political involvement by actively supporting Frommhagen's candidacy for Congress, by signing Frommhagen's nominating papers, and by voting for him in the November 1972 election. However, they all intend to vote in the June

6, 1972, primary election, but will all refrain from voting for a candidate to the United States Congress.

John R. Stevens is a registered member of the Republican Party in the Twelfth Congressional District.

Wendy R. Stevens is a registered member of the Democratic Party in the Twelfth Congressional District.

Jeanne Tarr is a registered member of the Democratic Party in the Twelfth Congressional District, but, in the past, has been a registered voter unaffiliated with any party.

Mary Prochnow is a registered member of the Democratic Party in the Twelfth Congressional District.

Charles W. Mercer is a registered voter, presently affiliated with the Democratic Party, but affiliated with the Republican Party previous to 1969.

V.

Plaintiff Frommhagen, as to his person and as to his interests, realleges and incorporates by reference paragraph X. of the Complaint in the instant action. In the manner described in said paragraph he is prohibited from appearing on the general election ballot as an independent candidate for Congress.

VI.

Plaintiffs John R. Stevens, Wendy R. Stevens, Jeanne Tarr, Mary Prochnow, and Charles W. Mer-

cer will be foreclosed from signing nomination papers for plaintiff Frommhagen for the reasons shown in paragraph XII. of the Complaint in this action.

The aforementioned plaintiffs reallege and incorporate by reference paragraphs XIII. and XIV. of the Complaint in this action.

VII.

Unless restrained by this Court the defendants and the proposed defendant will deny plaintiff Frommhagen a place on the ballot as an independent candidate in the election of November 7, 1972, for the reasons shown in paragraph XV. of the Complaint in this action.

VIII.

Unless restrained by this Court, the defendants, by requiring plaintiff Frommhagen to comply with the California statutory scheme for independent candidates, will deprive plaintiffs John Stevens, Wendy Stevens, Tarr, Prochnow, and Mercer of the opportunity to vote and participate actively in the political processes on a equal basis as shown in paragraph XVI. of the Complaint in this action.

IX.

Applicants, and each of them, reallege and incorporate by reference paragraph XVII. of the Complaint in this action.

For a Second and Distinct Cause of Action, applicants incorporate by reference paragraphs I through VI. of this pleading and further allege as follows:

X.

Plaintiff Frommhagen is absolutely prohibited from appearing on the November 1972 general election ballot as a candidate for Representative to the United States Congress because he has been affiliated within the past year with the Democratic Party and if he votes, as he intends to do, in the June 6, 1972, primary election. Paragraph XVIII. of the Complaint in this action is incorporated by reference.

XI.

Applicants reallege and incorporate by reference paragraph XIX. of the Complaint in this action and reassert that the addition of qualifications for Representative to the United States Congress by provisions of the California Elections Code is in violation of the rights secured to applicants by the United States Constitution.

XII.

Wherefore, applicants pray as shown in paragraph XXI. of the Complaint in this action in regard to their own persons and to their own interests, and respectfully request that those provisions of the California Elections Code, specified in the Complaint in this action, which prohibit plaintiff Frommhagen from appearing on the November 1972 ballot as an independent candidate for Congress be declared by this Court to be unconstitutional and that the defendants be enjoined from, directly or indirectly, refraining to certify plaintiff Frommhagen as a candidate for United States Representative in the Twelfth Con-

gressional District in the State of California. Applicants further pray that a three-judge court be convened to hear and determine this controversy, that they as plaintiffs be granted their costs in this suit, and that this Court grant such other and further relief as is just and proper.

Dated: June 4, 1972.

/s/ Laurence H. Frommhagen
Laurence H. Frommhagen

/s/ John R. Stevens, Jr.
John R. Stevens, Jr.

/s/ Wendy R. Stevens
Wendy R. Stevens

/s/ Jeanne Tarr
Jeanne Tarr

/s/ Mary Prochnow
Mary Prochnow

/s/ Charles W. Mercer
Charles W. Mercer

Subscribed and sworn to before me by Laurence H. Frommhagen, this 5th day of June, 1972,

(Seal) /s/ Marion J. Knight

Notary Public in and for the State of California
and the County of Santa Cruz

My Commission Expires July 10, 1974

Certificate of Service

The undersigned does hereby certify that he personally delivered copies of the foregoing Notice of

Motion and Motion for Intervention of Plaintiffs to (1) the office of the California Attorney General, 6000 State Building, San Francisco, California and (2) the office of the County Counsel, County of Santa Cruz, County Governmental Center, Santa Cruz, California, on June 5, 1972. The undersigned additionally sent by mail a copy of the said document to the office of the County Counsel, County of Marin, Civic Center, San Rafael and to Charles C. Marson, attorney for plaintiffs, American Civil Liberties Union, 593 Market Street, Suite 227, San Francisco, California, on June 5, 1972.

**/s/ Laurence H. Frommhagen
Laurence H. Frommhagen**

United States District Court
For the Northern District of California

No. C - 72 - 978 - AJZ

Thomas Tone Storer, Elizabeth Johnson, Salle S. Soladay, Robert Frachia, and Philip Drath,

Plaintiffs,

vs.

Edmund G. Brown, Jr., Secretary of State of the State of California and George H. Gness, County Clerk for the County of Marin,

Defendants.

ORDER

The Motion For Intervention Of Plaintiffs by applicants Laurence H. Frommhagen, John R. Stevens, Jr., Wendy R. Stevens, Jeanne Tarr, Mary Prochnow, and Charles W. Mercer having come on for hearing this day of , 1972, all parties having been fully apprised of this motion, and the motion having been fully considered,

It Is Hereby Ordered that the aforementioned applicants be joined as plaintiffs, and that Tom M. Kelley, County Clerk of the County of Santa Cruz be joined as defendant, in the above-entitled matter.

United States District Judge

Dated:

Exhibit 1

Watsonville Register-Pajaronian**Second Section****Wednesday, March 8, 1972**

Frommhagen seeking to run as independent

Larry Frommhagen, 42, of Soquel, announced yesterday he will seek a court decision to allow him to run against Rep. Burt Talcott, R-Salinas, as an "independent" candidate.

Frommhagen said he will challenge the constitutionality of the state elections code which prohibits a candidate running as an "independent", or one who refuses to state a party affiliation, if he has been affiliated with any political party 12 months before the June Primary.

Frommhagen, a consultant in land-development and scientific medical techniques, said he was registered as a Republican until 1969 when he switched to the Democratic party. "In the past week I have switched to the 'declined to state', and I have no party affiliation." He said he has become disenchanted with both parties.

He said he planned to ask superior court for injunctive relief from the restrictions of the election code.

Another aspect of the code he will challenge is the section which prevents anyone who votes in the June Primary partisan election from signing a petition

which would place his name on the general election ballot as an independent, Frommhagen said.

A similar suit is being filed in Marin county superior court by the American Civil Liberties Union on behalf of Mark Storer, an "independent" candidate in the Sixth Congressional District, Frommhagen said.

It would take 7,000 signatures to put his name on the ballot here in the 12th Congressional district, Frommhagen said.

Frommhagen described himself as a "mixture of social progressive and fiscal conservative."

Frommhagen, his wife, Joan and their daughter, Ann, 6, live at 5059 Old San Jose Road. He has been a resident of Santa Cruz county for three years. His parents are the Rev. and Mrs. Frederick Frommhagen of La Selva Beach.

**In the United States District Court for the
Northern District of California**

C-72-978 RHS

Thomas T. Storer, et al.,	}	Plaintiffs, Plaintiff-Intervenors, vs. Defendants, Defendant-Intervenor.
Laurence H. Frommhagen, et al.,		
Edmund G. Brown, Jr., et al.,		
Tom M. Kelley,		

[[Filed Jul. 20, 1972]]

**ORDER GRANTING LEAVE
TO INTERVENE**

Good cause appearing therefor, it is ordered that Laurence H. Frommhagen is hereby granted leave to intervene as a party plaintiff in the above entitled action.

Dated: July 17, 1972

**/s/ Robert H. Schnacke
Robert H. Schnacke
United States District Judge**

Laurence H. Frommhagen

In Propria Persona

P. O. Box 326

Soquel, California 95073

Telephone: 408/475-9746

United States District Court

For the Northern District of California

No. C - 72 - 978

Thomas Tone Storer, et al.,

Laurence H. Frommhagen, et al.,

Plaintiffs,

vs.

Edmund G. Brown, Jr.,

Tom M. Kelley, et al.,

Defendants.

NOTICE OF MOTION

and

MOTION FOR PRELIMINARY INJUNCTION

To the Attorneys for the Defendants:

Please Take Notice that on August 31, 1972, at 2:00 P.M., or as soon thereafter as counsel can be heard, in Courtroom No. 5 at 450 Golden Gate Avenue, San Francisco, California, plaintiff Frommhagen and co-plaintiffs will move for an order preliminarily enjoining defendants, and each of them, their agents, representatives, alternates, successors,

and anyone connected therewith, from, directly or indirectly, refraining to certify plaintiff Frommhagen as a candidate for United States Representative in California's Twelfth Congressional District and refraining from placing plaintiff Frommhagen's name on the November 7, 1972 general election ballot as a candidate for United States Representative in the Twelfth Congressional District upon plaintiff's Frommhagen's tendering of the statutory filing fee and the presentation by him of a nomination petition signed by at least 40 electors qualified to vote in the Twelfth Congressional District.

Said Motion will be based upon this Notice and Motion, the Memorandum of Points and Authorities filed by the attorneys for plaintiff Storer, and upon all of the pleadings and papers filed herein.

Dated: August 4, 1972.

/s/ Laurence H. Frommhagen
Laurence H. Frommhagen

Certificate of Service

The undersigned does hereby certify that he mailed copies of the foregoing Notice of Motion and Motion for Preliminary Injunction to Charles C. Marson, 593 Market Street, San Francisco, California 94105, to the Office of the California Attorney General, 6000 State Building, San Francisco, California 94102, and to the Office of the General Counsel, County of Santa Cruz, Santa Cruz County Governmental Center, Santa Cruz, California 95060, on August 4, 1972.

Laurence H. Frommhagen

In Propria Persona

P. O. Box 326

Soquel, California 95073

Telephone: 408/475-9746

United States District Court
For the Northern District of California

No. C - 72 - 978 - RHS

Thomas Tone Storer, et al.,

Laurence H. Frommhagen, et al.,

Plaintiffs,

vs.

Edmund G. Brown, Jr.,

Tom M. Kelley, et al.,

Defendants.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
GRANTING OF PRELIMINARY INJUNCTION
AND IN SUPPORT OF SECRETARY OF
STATE'S MOTION TO DISMISS THE ACTION**

This plaintiff is in receipt of defendant's Memorandum Of Points And Authorities In Opposition To Granting Of Preliminary Injunction And In Support Of Secretary Of State's Motion To Dismiss The Action, dated August 18, 1972, the letter of Clayton

P. Roche to the Court, dated August 10, 1972, and the letter of Charles C. Marson to the Court, dated August 21, 1972.

This plaintiff concurs with Mr. Marson in regard to Mr. Roche's complaint in his letter to the Court of August 10, 1972 that he had too little time in which to respond to plaintiffs' motion and points and authorities. It is abundantly clear from defendant's motion and the points and authorities in support thereof and in opposition to plaintiffs' motion, that Mr. Roche had abundant time and previous experience.

Defendant's assertion that this action is barred by laches is also reduced to inconsequentiality by Mr. Marson's showing in his letter to the Court of August 21, 1972, that there is sufficient time for the Court to grant relief before September 8, 1972, the last day to file independent nomination papers. This plaintiff has also been informed by officials in the Twelfth Congressional District that the ballot will not actually be printed until sometime in October. The printing of an additional name would present no great difficulty or expense.

Defendant should not be permitted to quash with the defense of laches the long-overdue determination on the merits of the issues in this Action. Nor should the defendant's representations as to the great complexities of the issues be allowed to prevail; the issues, though important, are not that complex. Deficient also is the argument that the Legislature should be permitted to act, particularly in view of the

sorry record of the past session of the Legislature. According to the understanding of this plaintiff no attempt was made in the previous session of the Legislature to review the independent nomination procedure. There is every reason to believe that the two major parties, faced as they are with the growing defection of many voters to the ranks of the independent (see Exhibit A), have no motivation to overhaul the independent nomination procedures.

In the Opposition to plaintiffs' motion the defendant Secretary of State speaks at length about the burden placed upon the State by the addition of those with frivolous motives to the ballot. Plaintiff submits that the statutory filing fee of nearly five hundred dollars is sufficient to discourage all but a very few of the frivolous. In addition, as this Court stated in *Fagg v. Sullivan*, C- 70 971- ACW (pages 3 and 4 of the Order Denying Motion For Summary Judgment And Dismissing Action—see Exhibit C of defendant's Memorandum Of Points And Authorities in this Action) there is reason to believe from the experience of states with more equitable independent nomination procedures that those procedures have not been abused and 'laundry-list' ballots have not accrued.

The central issue in this action, as it appears to this plaintiff, is that of "party loyalty." It is submitted that those who are genuinely disenchanted with a party, such as Storer and Frommhagen, should not be penalized by a 12-month period, which in these times of rapid change and pressing issues, is much too lengthy. Both Storer and Frommhagen an-

nounced their defection from the Democratic Party in the early Spring of this year. In analogy to the residency requirements for voting, which is now but thirty days, individuals of genuine principle, whose filing fee certainly reduces the burden on the State, should be free to ask for the support of their fellow citizens via a printed name on the ballot.

Defendant's contention that the write-in procedure is an acceptable alternative is fallacious on at least two scores. First of all, the psychological and physical handicap involved in the writing of names on the ballot, particularly with a name like Frommhagen, is well known and widely accepted. Secondly the writing-in of names on ballots itself presents a burden on the State which is in excess of the mechanical and computer countings of voter preferences for printed names.

A 'laundry-list' ballot, which this plaintiff denies would occur, should not dismay for it would signify a very welcome involvement by a greater number of persons in the political process. The viability and vitality of our form of government is absolutely dependent upon such involvement. Plaintiff is assured that the few names that would be added to the ballot; or even a 'laundry-list ballot' could be handled by the electorate in their wisdom and by the procedures and computers now available for the counting of the ballot.

At a time when the body politic is expressing far greater independence (see Exhibit A) and greater distrust of the established parties it ill behooves the

State to insist upon a doctrine of "party loyalty." The Secretary of State is suspect in that regard.

Defendant's contention that this Action is defective because the present nominees of the political parties in the Sixth and Twelfth Congressional Districts have not been joined as parties to this Action, is defeated by the very fact that said nominees, despite substantial publicity concerning this case in both of the Congressional Districts, have not sought intervention or, to the knowledge of this plaintiff, expressed any public opposition to the relief sought in this Action.

This plaintiff is particularly aroused, as are his supporters, by Section 6830(c) of the California Elections Code which has the effect of preventing persons registered with a political party from either supporting those of their party at the primary election for offices other than the one pursued by the independent candidate of their choice, or of being unable to sign the nomination papers of their independent candidate. Surely the electorate has the right to 'split' the ticket at the primary between those of their own party and those of no party.

Plaintiff is gratified by defendant's position that one who has voted in the 'decline-to-state' primary may run as an independent candidate in the following general election. Plaintiff expresses the hope the Court will comment upon this matter in its Opinion.

Dated: August 23, 1972.

/s/ Laurence H. Frommhagen
Laurence H. Frommhagen

Certificate of Service

The undersigned does hereby certify that he personally delivered copies of the foregoing Plaintiff's Response to Defendant's Memorandum of Points and Authorities, to the Office of California Attorney General, 6000 State Building, att: Clayton P. Roche, San Francisco, California 94102 and to the Office of the County Counsel, County of Santa Cruz Governmental Center, Santa Cruz, California 95060 on August 24, 1972. On that date copies were also mailed to Charles C. Marson, 593 Market Street, San Francisco, California 94105 and to the Office of the County Counsel, County of Marin, San Rafael, California.

/s/ Laurence H. Frommhamen
Laurence H. Frommhamen

Exhibit A

Santa Cruz Sentinel**SUNDAY MORNING—MARCH 26, 1972****117th Year No. 72****54 Pages 15c****The Decline And Fall Of The Two-Party System****By JOHN S. LANG****Associated Press Writer**

WASHINGTON (AP) — America's two-party system is sick and likely dying of self-inflicted wounds, the result of a suicidal struggle between ideological twins for the same votes.

That is the belief, and growing concern, among the men who know the illness best, the backroom professionals who pull the party strings.

Political professionals view the causes as rooted in the failure of both the Republican and Democratic parties to solve the problems of war, poverty and racial enmity, and to offer true alternatives while seeking power from the same, broad middle ground of American society.

The visible consequence of ignoring the political perimeter is the diminishing number of Americans who identify themselves with either major party. A still later development is the growth of splinter parties on the left and right, and the first stirrings toward a coalition of these seemingly incompatible forces.

The common ground they share is an old-fashioned populism; programs that, in effect, demand a redistribution of wealth.

In their darkest visions, politicians, historians and political scientists see the possibility of the United States entering a situation similiar to that of France after World War II and Italy today, with neither major party able to command broad public support, and government turned over to coalitions which collapse in the face of every crisis.

The challenge comes from 25 million American voters—20 per cent of the electorate—who are refusing to give allegiance to either national party.

While still trailing far behind the Democrats, the number of independents rivals the 38 million who, according to a recent Gallup poll, would register as Republicans today.

Significantly, this independent sector has increased from 6.2 million in 1960. And it is that trend over a long term which frightens party politicians.

"It all goes basically to the fact people don't think too much of us so-called politicians," says Leonard W. Hall, longtime power in the Republican party and National Chairman

(Continued on Page 2)

Laurence H. Frommhagen

In Propria Persona

P.O. Box 326

Soquel, California 95073

Telephone: 408/476-5660

United States District Court
for the Northern District of California

—
No. C - 72 - 978 - RHS
—

Thomas T. Storer, et al., Laurence H. Fromm-
hagen, et al.,

Plaintiffs,

vs.

Edmund G. Brown, Jr., Tom M. Kelley, et al.,

Defendants.

**PLAINTIFF'S WRITTEN REBUTTAL TO
ORAL ARGUMENTS BY COUNSEL FOR
DEFENDANT-IN-INTERVENTION**

This plaintiff attempted strenuously to obtain the attention of the Court at the conclusion of the hearing in this matter on August 31, 1972, for the purpose of requesting permission to make a short rebuttal to opposing counsel's arguments; plaintiff did not succeed. Hereupon plaintiff respectfully requests the Court to take judicial notice of the following rebuttal arguments.

1. It should be noted that no appearance was made by counsel for Tom M. Kelley, defendant-in-intervention. On September 1, 1972, Howard E. Gawthrop, County Counsel of the County of Santa Cruz, California, advised this plaintiff during a personal discussion that the representation of Tom M. Kelley, County Clerk of the County of Santa Cruz, California, had been officially delegated to the Office of the California Attorney General. In the memory of plaintiff, Clayton P. Roche has not informed the Court that he is representing Tom M. Kelley, together with Edmund G. Brown, Jr., in this Action before this Court. By copy of this submission to the office of the California Attorney General, Clayton P. Roche is requested to so inform the Court by filing in this action a notice of his appearance for Tom M. Kelley.

2. While it must be conceded that the Constitution does not specifically guarantee an independent a place on the ballot, neither does the Constitution forbid such a place on the ballot. In point of fact, the Fourteenth Amendment to the United States Constitution does forbid an independent nomination procedure so invidiously complex and restrictive as to make it vastly more difficult for an independent to win a place on the ballot than a member of the party system.

This plaintiff does not quarrel with the number of signatures necessary to qualify an independent candidate, but rather he takes issue with the other provisions of the Election Code (the one year registration as an independent, the exclusion of those who vote at the primary, and the very short period of time

to collect the signatures and to verify them) which make it practically impossible to obtain the requisite number of signatures, whether 5%, 1%, or less.

3. Opposing counsel's argument that Frommhagen could qualify by forming his own party is completely untenable when measured against the facts (1) that Frommhagen doesn't want to form another party; his appeal and thrust is in the direction of those who are sick of politics and politicians, and (2) that he would have to generate a statewide party amounting to not less than 1% of those who voted at the last general election, just to be able to run in the Twelfth Congressional District. Indeed he would have to register several times more voters than in the Twelfth Congressional District.

4. In order to provide for a high rate of disqualification due to the provision that those who vote at the primary are excluded for signing the independent's nomination papers, it would be necessary for an independent to obtain not 5%, but rather 7 to 8%. It might be speculated that if the disqualification rate was less than anticipated the independent's nomination papers would exceed 6% and he would be disqualified by reason of the 6% maximum in Section 6831 of the Elections Code.

5. This plaintiff wishes to reemphasize his argument that the write-in procedure is considerably more burdensome upon the state and upon its citizens than would be a less restrictive independent nomination procedure, as well as Mr. Halvonik's oral argument that the certification of the names on the nomination

papers would be extremely burdensome on the elections offices, particularly within the five day limit prescribed by law. Indeed the latter could be impossible under certain circumstances.

The time periods for gathering signatures and verifying them are prohibitively short and are discriminatory when referenced against those time periods allowed for party nominations, party certifications to the ballot, referendums, and initiatives.

6. As to those propositions which lie just beneath the surface of certain of the opposing arguments to the effect that only those who belong to a party can hope to win a election and that independents are eccentrics, frivolous, or both, let it be noted that the United States Constitution and the heritage of this country protects the 'normal' as well as the eccentric. It cannot be denied that eccentrics are often at the forefront of human progress because they are willing to stand alone in behalf of their convictions.

Respectfully submitted,

/s/ Laurence H. Frommhagen
Laurence H. Frommhagen

Dated: September 4, 1972.

Certificate of Service

The undersigned does hereby certify that he mailed fully conformed copies of the foregoing Plaintiff's Written Rebuttal to Oral Arguments by Counsel for Defendant-In-Intervention on September 5, 1972, to (1) the Office of the California Attorney General, att: Clayton P. Roche, 6000 State Building, San Francisco, California 94102, (2) the Office of the County Counsel, att: Howard E. Gawthrop, County Governmental Center, Santa Cruz, California 95060, and (3) the Offices of the counsels for plaintiff Storer, att: Charles C. Marson, 593 Market Street, San Francisco, California 94105 and Paul N. Halvonik, 680 Beach Street, Suite 436, San Francisco, California 94109.

In the United States District Court for the
Northern District of California

Thomas T. Storer, et al.,

Plaintiffs,

vs.

Edmund G. Brown, Jr., et al.,

Defendants.

C-72-978

Gus Hall, et al.,

Plaintiffs,

vs.

Edmund G. Brown, Jr., et al.,

Defendants.

C-72-1468

[Filed September 8, 1972]

OPINION AND ORDER

The above cases, though not identical as to parties and presenting slightly different contentions, or the same contentions in slightly different contexts, present, in the view of the Court, substantially the same ultimate issues and require only a single opinion.¹ Both cases turn in the final analysis on the Constitutionality of Division 5, Chapter 3, comprising §§6800

¹*Storer*, in which plaintiffs are potential candidates for the office of Representative in Congress and certain of their alleged supporters, was commenced first, had passed through the stages of designation of a three-judge District Court pursuant to 28 U.S.C. §2284 and plaintiff's motion for a preliminary injunction and defendants' motion to dismiss were set for hearing when *Hall* was filed on behalf of a potential candidate for President of the United

through 6290, of the California Elections Code, providing a procedure for so-called Independent nominations by which a candidate for any public office not nominated in the party primaries may obtain a place on the ballot as an Independent candidate. Plaintiff Storer and plaintiff-intervenor Frommhagen, not having been nominated in their party primaries as candidates for Representative in Congress for their respective districts and plaintiff Hall, not having been nominated in the presidential primary for President of the United States, allege that they wish to appear as candidates for such offices as Independent, but are effectively barred from doing so by various provisions of the statutes referred to above, especially §§6830(c) and (d) (which disqualify persons who voted at the immediately preceding primary election from being either candidates or signers of a candidate's nomination papers for Independent status and also disqualify a person registered as a party member for one year preceding the immediately preceding primary from being a candidate in an Independent capacity); 6831 (requiring the signatures on nomination papers for Independent candidates of 5 to 6% of the entire vote in the district in the preceding general election—alleged to require some 9,500 signatures in the district Storer seeks to represent and state on an

States. By appropriate orders and stipulations, although the cases were never consolidated, the parties to *Hall* will be bound by the rulings made in *Storer* which are common to both cases and any separate issues in *Hall* stand submitted without further briefing or oral argument. The view taken by the Court herein is such that there are no separate issues in *Hall* and the rulings expressed are dispositive of both cases. Unless otherwise indicated, all statutory references are to the California Elections Code.

exhibit to the complaint in intervention to require some 7,500 signatures in the case of Frommshagen) and 6833 (allowing only 24 days within which to prepare, file and lodge Independent nomination papers). Storer alleges that he is over the Constitutionally required age of 25, is a registered voter, presently unaffiliated with any political party, though previously a registered Democrat for many years prior to January, 1972 when he switched his registration to "Decline to State". He intends, however, as the law allows, to vote in the June 6, 1972 primary on non-partisan matters (The complaint, filed in May, 1972, necessarily limits the plaintiffs to a statement of their intentions with respect thereto.) Johnson intends likewise to vote on non-partisan matters but not to vote for a Democratic candidate for Representative in Congress. Fracchia and Drath intend to vote on all matters they are entitled to by virtue of their Democratic registration, including nomination of a Representative in Congress. All the four plaintiffs mentioned above, however, desire to sign Independent nomination papers for Storer.

As the foregoing summary of the relevant statutes shows, Storer will be barred from Independent candidacy by §6830(c) if he carried out his stated intention of voting on non-partisan matters in the June primary and by §6830(c) and (d) by virtue of his prior Democratic registration, and all plaintiffs mentioned above will be barred from signing Storer's nomination papers by §6830(c).

In addition, all plaintiffs complain of the large signature requirements of §6831 and the short time to meet them afforded by §6833.

Plaintiff-intervenor Frommhagen alleges his age qualification, his change of registration from Republican to Democrat in 1969 and from Democrat to "Decline to State" in March 1972.

The other five plaintiffs in intervention joining Frommhagen are all barred, contrary to their wishes, from signing Independent nomination papers for Frommhagen as registered members of either the Republican or Democratic party, by virtue of §6830(c).

In *Hall*, plaintiff alleges membership in the Communist Party of the United States, which has not qualified under the requirements of §6430; as mentioned above, he seeks to be a candidate for President of the United States and is otherwise allegedly qualified for the office, but can do so only under the Independent nomination procedure. Like allegations are made as to plaintiff Tyner, who seeks the Vice Presidency. Plaintiff Wilkinson is registered as a Democrat; plaintiff Lima is a registered Communist; and plaintiffs Lopez and Graham are registered as affiliated with La Raza Unida Party.

The plaintiffs in *Hall* advance virtually the same objections as are advanced in *Storer*; the signature requirements of §6831, the short time periods afforded by §§6833 and 6864 and the qualification of signers provided by §6830(c). For obvious reasons, they do not attack the prohibition on candidacy made by

§6830(d), since the proposed candidates are not members of a qualified political party.

California affords candidates at least four paths to partisan office; while some may be smoother than others, they are nevertheless open: (1) obtaining the nomination of one of the established parties in a regular direct party primary (Division 5, Chapters 1 and 2); (2) the formation and qualifications of a new party and obtaining its nomination (§6430), the requirements for which were upheld in *Christian Nationalist Party v. Jordan*, 49 C.2d 448 (1957); *Socialist Party, U.S.A. v. Jordan*, 49 C.2d 864 (1957), *certiorari denied*, 356 U.S. 952 (1957); (3) the Independent nomination procedure here involved; (4) the write-in procedure afforded in both the primary and general elections by §§10213, 10228, 10292, 10317, and 14412.

It cannot be said, in view of the foregoing, that any individual wishing to pursue a political career lacks ample opportunity to do so nor that individual voters are not afforded an adequate opportunity to vote for candidates of their choice. While a state may not create a situation in which parties are *de facto* restricted to the old established parties, Republican and Democratic, *Williams v. Rhodes*, 393 U.S. 23 (1968), this is certainly not true in California; we are advised without dispute that at present four parties enjoy official recognition on the California ballot. Thus, the basic freedoms guaranteed by the First and Fourteenth Amendments and invoked by plaintiffs here are satisfied. *Jennes v. Fortson*, 403 U.S. 431 (1971).

Legislatures of the respective states have broad powers, granted by Article I, Section 4 and Article II, Section 1 of the Constitution itself, to regulate the conduct of elections for Senators and Representatives and for electors for President and Vice President. While such power is not unlimited, *Williams v. Rhodes, supra; N.A.A.C.P. v. Button*, 371 U.S. 415 (1963), restrictions upon candidacy are subject only to a showing of legitimate state interest reasonably carried out.

The California statutes in question here are obviously designed to make it difficult to create, if not in fact to prevent, the confusion which would result from the unfettered ability of candidates and voters to skip freely from one party affiliation to another or to disavow previous party affiliations on short notice and strike out on their own as plaintiffs seek to do here. The prevention of such confusion is a legitimate objective. *Bendinger v. Ogilvie*, 335 F.Supp. 572 (N.D. Ill. 1971, three-judge court). There is no Constitutional prohibition, therefore, against legislation which, to this end, imposes more onerous requirements upon candidates and voters seeking to engage in "party hopping". *Jackson v. Ogilvie*, 325 F.Supp. 864 (N.D. Ill. 1971, three-judge court, one judge dissenting), *affirmed*, 403 U.S. 925 (1971).

Inasmuch as the foregoing principles are well-settled and the special requirements for Independent nomination in California attacked in these cases fall well within them, plaintiffs have failed to state a claim upon which relief can be granted. Requirements and

restrictions closely similar to those here attacked have been upheld against attack on virtually the same grounds advanced here. Cf. *Bendinger v. Ogilvie, supra*, (disqualification of candidates affiliated with another party within prior two years—compare §6830 (c), (d); *Jackson v. Ogilvie, supra*, (disqualification as signers of nomination papers of those voting in preceding primary—compare §6830(c)); *Moore v. Board of Electors*, 319 F.Supp. 437 (D.D.C. 1970, three-judge court) (additional signatures and more limited time periods for Independent candidates—compare §§6831 and 6833).

The long and short of it is that the California Legislature, like those of many if not most states, has determined that the orderly functioning of the electoral process is best served by promoting party loyalty to one of a reasonable number of qualified parties with which the candidate or voter has established and maintained his affiliation for a reasonable period of time and, as said above, to discourage the confusion necessarily attendant upon a proliferation of candidates and a “laundry list” ballot.² These objectives are clearly permissible under the First and Fourteenth Amendments, and the requirements here attacked do not transcend the permissible means of achieving such objectives.

²A reasonable argument can be made that as a result of the number of qualified parties, the large number of special quasi-municipal districts authorized by law and requiring voter approval for certain types of action, all taken together with the California-adopted Populist practices of initiative, referendum and recall, the California ballot is already far too long for the average intelligent voter to cope with; this Court would be most loath to lengthen it, as is the Legislature.

For the foregoing reasons, the defendants' motions to dismiss in each of the above cases are granted and the complaints and actions are dismissed.

Dated: September 8, 1972.

/s/ O. D. Hamlin
Senior United States Circuit Judge

/s/ Robert H. Schnacke
United States District Judge

3

³Hon. William G. East, Senior United States District Judge, the third member of the Court, has indicated his concurrence in the preceding Opinion and Order, although prevented by official duties elsewhere from affixing his signature.